

# EXHIBIT

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THE HONORABLE JAMES L. ROBERT

IN THE UNITED STATES DISTRICT COURT  
IN AND FOR THE WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

MARTIN HOYENKOTTER,

Plaintiff,

NO. 2:09-cv-00218 JLR  
AFFIDAVIT OF LARRY BATTON IN  
SUPPORT OF PLAINTIFF'S MOTION  
FOR CLASS CERTIFICATION

vs.

SAFECO Corporation, SAFECO Insurance  
Company of America, and SAFECO Insurance  
Company of Illinois,

Defendants.

AFFIDAVIT OF LARRY BATTON

IN SUPPORT OF

PLAINTIFF'S MOTION FOR CLASS CERTIFICATION

BEFORE ME, the undersigned authority, on this day appeared Larry Batton who, upon being duly sworn, did depose and testify as follows:

My name is Larry Batton. I am over twenty-one (21) years of age, have never been convicted of a felony or crime involving moral turpitude, and am fully competent to make this affidavit. The facts stated herein are, within my personal knowledge, true and correct.

I am the founder and President of Automobile Appraisal Group, Inc. (AAG) a nationwide company providing comprehensive appraisals of all types of automobiles since 1990. I oversee all research performed for AAG appraisals including investigation of current market activity, sales, trends, comparable value analysis, and diminished value due to accident damage. Our appraisal service determines market values of automobiles for insurance matters, gift tax requirements and for consumers prior to purchase or sale of their automobile. I have done work for Nations Bank, U.S. Naval Credit Union, State Farm, Atlanta, Interimco, the FDIC, the

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engineered mutation...*CCNA-1*...

3. My experience of over 25 years in the automobile business including positions of general manager and sales manager for Chrysler-Plymouth-Dodge-Subaru, Mazda, Chevrolet,

4. In determining the existence of, and the amount of, diminished value, I use information from the insurance claim file. This can include, but is not limited to, the repair

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2. I have testified in both Federal and State District courts where I have presented testimony on property valuations. I am the author and instructor of the AAG Certification

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~~estimate, photographs and any reports of prior damage as shown on the insurance estimate inspection report. From these records I take the mileage, year, make and model of the vehicle, as well as the general condition and the options it is equipped with. The repair estimate also shows the type and amount of damage to the vehicle. I can then easily determine the automobile's pre-loss value by using comparables or the NADA's (National Automobile Dealers Association) value. With this information, I then use comparable car sales to evaluate and determine the diminished value. I find comparables through auction and sales data, from dealer websites such as Franklin Auctions and through information gathered by AAG or other weekly automobile auction held around the nation. The above described methodology for assessing diminished value is commonly accepted in my field. In this matter, I reviewed the repair estimate for Mr. Hovenkotter's vehicle. If additional documents are produced from the insurance claim file, I will review them and this could alter my assessment.~~

~~Based upon my years of experience, I have the following opinions:~~

~~5. Vehicles that are in their original condition will always bring a higher price than vehicles of the same make, model, year, type and mileage that have had been damaged in the manner described in Mr. Hovenkotter's repair estimate. Inherent diminished value exists across geographic regions and across all types of vehicles. Mr. Hovenkotter's vehicle incurred inherent diminished value.~~

~~6. Vehicles that have not been damaged are more sought after by the general public. As a general rule, automotive professionals will pay more for vehicles that have not been damaged than they will pay for damaged vehicles. This difference in value is well recognized in the automobile sales profession. Some leasing companies charge a lease an accident penalty. NADA's and CAG's (which increase a computerized repair estimation system) are each developing software and quantifiable difference in market prices between wrecked and unwrecked~~

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model of the vehicle, as well as its general condition and the options it is equipped with. The repair estimate also shows the type and amount of damage to the vehicle. I can then easily determine the automobile's pre-loss value by using comparables or the NADA's (National Automobile Dealers Association) value. With this information, I then use comparable car sales to evaluate and determine the diminished value. I find comparables through auction and sales data from both dealer and public auctions, and through information gathered by AAG through other appraisal assignments across the nation. The above described methodology for assessing diminished value is commonly accepted in my field. In this matter, I reviewed the repair estimate for Mr. Hovenkotter's vehicle. If additional documents are produced from the insurance claim file, I will review them and this could alter my assessment.

Based upon my years of experience, I have the following opinions:

5. Vehicles that are in their original condition will typically bring a higher price than vehicles of the same make, model, year, type and mileage that have been damaged in the manner described in Mr. Hovenkotter's repair estimate. Inherent diminished value exists across geographic regions and across all types of vehicles. Mr. Hovenkotter's vehicle incurred inherent diminished value.

6. Vehicles that have not been damaged are more sought after by the general public. As a general rule, automotive professionals will pay more for vehicles that have not been damaged than they will pay for damaged vehicles. This difference in value is well recognized in the automobile sales profession. Some leasing companies charge a lease an accident penalty. Auction disclosure rules also require that certain types of damage to vehicles brought to auction be disclosed. This allows the buyer to know about damage without having to view the car and consequently bid appropriately on the vehicle. Auction Rules allow cars with undisclosed prior

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guides to diminished value to quantify this effect. Auction disclosure rules also require certain types of damage to vehicles brought to auction be disclosed. This allows the buyer to know about damage without having to view the car and consequently bid appropriately on the vehicle. Auction Rules allow cars with undisclosed prior repaired damage to be returned or have their prices adjusted downward. These market factors are all reflections of the uniform existence of diminished values.

7. The presence and amount of inherent diminished value can be determined without physical inspection of the vehicle. Typically when I am asked to inspect a car it is to determine whether the repairs were properly performed. As discussed above, the information necessary to determine the existence of and the amount of diminished value is contained in the typical estimate of damage written by or for an insurance company. In fact, if given complete repair estimates showing the general type and amount of damage, it is not necessary to repair the vehicle before I can determine the amount of diminished value that has resulted from the vehicle having been damaged. It is also not necessary to sell a vehicle before I can determine the amount of diminished value. The diminished value exists as of the time a vehicle is damaged. The factors that cause diminished value—loss of the full use and enjoyment of a vehicle—are also present from the point when a vehicle is damaged as a damaged vehicle can never be returned to its pre-loss condition.

8. I have frequently completed diminished value assessments for major insurers without inspecting the vehicle. I have frequently completed diminished value assessments for major insurers to do a large scale diminished value study of over twelve insured vehicles. The evaluation took place six years after the damage to the vehicles occurred. I inspected only six of the vehicles and rendered a diminished value opinion on all vehicles in the class based upon my inspection of the limited number of similarly affected vehicles.

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repaired damage to be returned or have their prices adjusted downward. These market factors are all reflections of the uniform existence of diminished value.

7. The presence and amount of inherent diminished value can be determined without physical inspection of the vehicle. Inspection of the vehicle may be performed to determine whether repairs were properly performed. As discussed above, the information necessary to determine the existence of and the amount of diminished value is contained in the typical estimate of damage written by or for an insurance company. In fact, if given complete repair estimates showing the type and amount of damage, it is not necessary to repair the vehicle before I can determine the amount of diminished value that has resulted from the vehicle having been damaged. It is also not necessary to sell a vehicle before I can determine the amount of diminished value. The diminished value exists as of the time a vehicle is damaged. A damaged vehicle can never be repaired to its pre-loss condition.

8. Appraisal techniques can also be used to value large numbers of vehicles based upon a sample of similar types of vehicles. For example, in 1998, I was hired by General Motors to do a large scale diminished value study of over twelve insured vehicles. The evaluation took place six years after the damage to the vehicles occurred. I inspected only six of the vehicles and rendered a diminished value opinion on all vehicles in the class based upon my inspection of the limited number of similarly affected vehicles.

9. In my extensive appraisal work with comparisons I have found that there is a relationship between the amount of damage, the pre-loss value of the vehicle and the inherent

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example, in Virginia, I was hired in a case against Allstate. The car was a Fordson, with few mileage and approximately eight to nine thousand dollars in damage. I had information from the repair estimate, the same information used by Allstate's expert. Neither Allstate's expert nor myself inspected the car. Allstate's expert testified that the diminished value was two thousand dollars, my opinion was that the diminished value was five thousand dollars. Based on the fact that I had more experience than Allstate's expert, the Court accepted my opinion and ordered it paid.

9. Appraisal techniques can also be used to value large numbers of vehicles based upon a sample of similar types of vehicles. For example, in 1998, I was hired by General Motors to do a large scale diminished value study of over twelve hundred vehicles. The evaluation took place six years after the damage to the vehicles occurred. I inspected only sixty of the vehicles and rendered a diminished value opinion on all vehicles in the class based upon my inspection of the limited number of similarly affected vehicles.

10. In my extensive appraisal work with comparables I have found that there is a relationship between the amount of damage, the pre-loss value of the vehicle and the inherent diminished value. As with my work for GM this can be quantified by looking at similar vehicle sales rather than an individual determination as to each damaged car.

11. Inherent diminished value exists the moment a vehicle is in an accident and continues to exist throughout the life of the operational vehicle. Diminished value follows the vehicle and while further damage to the car can add to the diminished value, the percentage of diminished value for the original damage remains the same over the life of the vehicle. This inherent diminished value exists whether or not there is additional damage due to improper repairs and the two can be separated in calculating inherent diminished value. In preparing valuations of vehicles the additional repair related diminished value is determined through an

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diminished value. As with my work for GM this can be quantified by looking at similar vehicle sales rather than an individual determination as to each damaged car.

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11. Inherent diminished value occurs whenever a vehicle suffers damage which includes but is not limited to any of the following: structural and/or frame damage, paint work, deformed sheet metal and/or flood damage. The repair of these types of damage always leaves evidence of repair. Anytime a vehicle has been repaired, the value will be affected. If it can be determined that a vehicle has been in an accident, there is diminished value.

Further Affirm Seth Naught.

SWORN TO AND SUBSCRIBED before me,  
a Notary Public, State of Virginia  
this 23 day of February, 2010, by:

*James Sheridan May*  
James Sheridan May  
Notary Public  
My Commission Expires: 6/30/2011

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inspection of the repairs made to the vehicle and added to the amount of inherent diminished value which can be determined without an inspection.

15. Inherent diminished value occurs whenever a vehicle suffers damage which includes any of the following: structural and/or frame damage, paint work, deformed sheet metal and/or flood damage. The repair of these types of damage always leaves evidence of repair. Anytime a vehicle has been repaired and it is apparent the value will be affected. If you cannot tell the vehicle has been in an accident, there is diminished value. For example, I can always tell if a vehicle has been repainted because of the difference in the color and the technique used in the application of the paint and/or from over-spray resulting from the repair.

Further Affirm Smith Naught.

LEAHY BAYRON

SWORN TO AND SUBSCRIBED before me,  
a Notary Public, State of Virginia  
this \_\_\_\_\_ day of \_\_\_\_\_, 2010, by:

Notary Public  
My Commission Expires: